

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

VERINATA HEALTH, INC. and THE
 BOARD OF TRUSTEES OF THE
 LELAND STANFORD JUNIOR
 UNIVERSITY,

Plaintiffs and
 Counterclaim
 Defendants,

v.

ARIOSIA DIAGNOSTICS, INC. and
 LABORATORY CORPORATION OF
 AMERICA HOLDINGS,

Defendants and
 Counterclaim
 Plaintiffs.

Case No. 3:12-cv-05501-SI

DOCUMENT PRODUCTION ORDER

Judge: Hon. Susan Illston

Plaintiffs and Counterclaim Defendants Verinata Health, Inc. (“Verinata”), and The Board of Trustees of The Leland Stanford Junior University (“Stanford”), and Defendants and Counterclaim Plaintiffs Ariosa Diagnostics, Inc. (“Ariosa”) and Laboratory Corporation of America Holdings (“LabCorp”) (collectively, the “Parties”) agree that this proposed Document Production Order (“Production Order”) shall govern the Parties in the above-captioned case (the “Litigation”).

I. GENERAL PROVISIONS

A. The Parties will make reasonable efforts to prepare responsive and non-privileged data for production in accordance with the agreed-upon specifications set forth below. These specifications apply to hard copy documents or electronically stored information (“ESI”) which are to be produced in this Litigation.

1 **B. SECURITY.** The Parties will make reasonable efforts to ensure that any productions
2 made are free from viruses and may be provided on encrypted media.

3 **C. CONFIDENTIALITY DESIGNATION.** Responsive documents in TIFF format
4 will be stamped with the appropriate confidentiality designations in accordance with the Stipulated
5 Protective Order in this matter. Each responsive document produced in native format will have its
6 confidentiality designation identified in the filename of the native file.

7 **D. PRODUCTION MEDIA.** Documents shall be produced on readily accessible
8 external hard drives, DVD, or CD disks (“Production Media”). When reasonably feasible, each
9 piece of Production Media shall be labeled with (1) the producing Party’s name; (2) the production
10 date; and (3) the Bates Number range of the materials contained on the Production Media.

11 **II. DATA PROCESSING**

12 **A. DEDUPLICATION.** To the extent feasible, the Parties will de-duplicate responsive
13 ESI across Custodians. For each de-duplicated document, to the extent feasible, the names of all
14 custodians that possessed the document shall be produced. De-duplication may be done
15 automatically via standard techniques such as those based on MD5 or SHA-1 hash values.

16 **III. GENERAL PRODUCTION SPECIFICATIONS**

17 **A. FORMAT.** To the extent feasible, documents (whether originating in electronic or
18 hard copy format) shall be produced as single page TIFF files, preserving original color and font. To
19 the extent feasible, documents originating in hard copy format shall be converted to TIFF images by
20 scanning with at least 300 dots per inch (dpi). Each TIFF or PDF image shall be named according to
21 the corresponding Bates number associated with the document. Each image shall be branded
22 according to the Bates number and given a confidentiality designation, if applicable. TIFFs shall
23 show all text and images that would be visible to a user of the hard copy documents.

24 **B. TEXT TO BE PROVIDED WITH IMAGE FILES.** For each document, extracted
25 or optical character recognition (“OCR”) text shall be provided. To the extent possible, the text of
26 native files should be extracted directly from the native file. If a document has been redacted, OCR
27 of the redacted document will suffice in lieu of extracted text. Extracted or OCR text may be
28 included in the database load files or in separate files, so long as it is provided in such a manner that

1 it can be loaded into commercially acceptable production software (*e.g.*, Concordance, Summation,
2 Ipro).

3 **C. DATABASE LOAD FILES/CROSS-REFERENCE FILES.** Production shall
4 include a data load file and an image load file in a reasonable format specified by the requesting
5 party, or, if no request is made in a format that can be loaded into commercially acceptable
6 production software (*e.g.*, Concordance, Summation, Ipro).

7 **D. BATES NUMBERING.** All images must be assigned a unique Bates number that is
8 sequential within a given document and across the production sets.

9 **E. REDACTION OF INFORMATION.** If documents are produced containing
10 redacted information, the producing Party shall supply a list of the documents for any such claim(s)
11 of redaction, indicating the grounds for the redaction and the nature of the redacted material. During
12 the course of the Litigation, an electronic copy of the original, unredacted data shall be securely
13 preserved in such a manner so as to preserve without modification, alteration, or addition the content
14 of such data including any metadata therewith. This Document Production Order, the Stipulated
15 Protective Order, and rules of the Court in this case set forth the basis for the redaction of
16 information.

17 **F. UNITIZING OF DOCUMENTS.** Distinct documents should not be merged into a
18 single record, and single documents should not be split into multiple records (*i.e.*, documents should
19 be unitized as kept in the ordinary course of business). The Parties will use reasonable efforts to
20 unitize documents correctly.

21 **IV. PRODUCTION OF ELECTRONICALLY STORED INFORMATION**

22 **A. METADATA FIELDS AND PROCESSING.** E-discovery production requests
23 under Federal Rules of Civil Procedure 34 and 45 shall not require metadata, other than as specified
24 on Exhibit A attached, absent a showing of good cause. Any Metadata that is produced shall be
25 formatted into a basic .txt, .dat or .csv file with delimiters appropriate for use with commercially
26 acceptable review software (*i.e.*, a load file). Parties may request other native files be produced as
27 described in Section IV.D. below.

28 **B. SPREADSHEETS.** Spreadsheets must be produced in native format.

1 **C. PROPRIETARY FILES.** To the extent a response to discovery requires production
 2 of ESI accessible only through proprietary software, the Parties should continue to preserve each
 3 version of such information. The Parties shall meet and confer to finalize the appropriate production
 4 format.

5 **D. REQUEST(S) FOR ADDITIONAL NATIVE FILES.** If good cause exists to
 6 request production of specified files, other than those specifically set forth above, in native format,
 7 the Party shall request such production and provide an explanation of the need for native file review.
 8 The Parties shall work together to provide documents in reasonable useful format.

9 **V. PROCESSING OF THIRD-PARTY DOCUMENTS**

10 **A.** A Party that issues a subpoena requesting the production of documents (“Issuing
 11 Party”) shall include a copy of this Document Production Order with the subpoena and state that the
 12 Parties to the Litigation have requested that third-parties produce documents in accordance with the
 13 specifications set forth herein.

14 **B.** The Issuing Party shall ensure that any documents it obtains pursuant to a subpoena
 15 are produced to all Parties.

16 **C.** If the non-party production is not Bates-stamped, the Issuing Party will endorse the
 17 non-party production with unique prefixes and Bates numbers prior to producing them to other
 18 Parties.

19 **D.** Nothing in this stipulation is intended to or should be interpreted as narrowing,
 20 expanding, or otherwise affecting the rights of the Parties or third parties to object to a subpoena.

21 **VI. SEARCHING AND SCOPE OF PRODUCTION**

22 **A. SOURCES.** In responding to general requests under Federal Rules of Civil
 23 Procedure 34 and 45 that call for the production of ESI, the Parties will search central repositories,
 24 such as shared network drives, document databases, and shared documents and files held by
 25 individuals who are designated as being responsible for the maintenance and safekeeping of such
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documents on behalf of the company. In general, the Parties shall not be required to search email or other forms of electronic correspondence or custodial ESI in responding to such requests.¹

B. SOURCES THAT NEED NOT BE SEARCHED. The following locations will not be searched under any circumstances, and as such need not be preserved, absent a Court order upon showing of good cause: personal digital assistants, mobile phones, voicemail systems, instant messaging logs, and automated disaster recovery backup systems and/or disaster recovery backup tapes. In addition, the parties agree that with respect to documents that automatically “autosave,” only the most recent version of such documents need be searched.

C. EMAIL AND CUSTODIAL ESI REQUESTS.

To obtain email or custodial ESI beyond that stated in section VI(A) above, a Party must propound specific requests for the production of email or custodial ESI pursuant to Federal Rules of Civil Procedure 34 and 45. Such requests shall be propounded for specific issues (rather than general discovery of a product or business) and shall identify the requested custodian, search terms/phrases, and time frame. The Parties shall cooperate to identify the proper custodians subject to these requests and proper search terms/phrases.

Email and custodial ESI production shall be limited to a total of no more than eight custodians per side. For custodians Stephen Quake and Christina Fan, from whom email and custodial ESI were collected and produced in Related Case No. 12-00865, and which email and custodian productions in Related Case No. 12-00865 have been re-produced in their entirety in the instant case, the email and custodial ESI production shall be limited to a total of no more than five search terms/phrases per custodian (in addition to the terms/phrases in Related Case No. 12-00865). For custodians Quake and Fan, Verinata and Stanford have provided Ariosa and LabCorp with the search terms that were used in Related Case No. 12-00865 to process the email and custodial ESI of each custodian. For all other custodians, the email and custodial ESI production from such custodians shall be limited to a total of no more than ten search terms/phrases per custodian. The Parties may jointly agree to modify these limits without the Court’s leave. The search terms/phrases

¹ As used herein, “custodial ESI” refers to ESI that is in the possession of an individual custodian, rather than in central repositories.

1 shall be narrowly tailored to the particular issues addressed by the Rule 34 or 45 requests for
 2 production of email or custodial ESI. Indiscriminate terms/phrases, such as the producing
 3 company's name or its product name, are inappropriate unless combined with narrowing search
 4 criteria that sufficiently reduce the risk of overproduction. Search terms/phrases unrelated to a
 5 propounded Rule 34 or 45 request for production are prohibited. A conjunctive combination of
 6 multiple words or phrases narrows the search and shall count as a single search term/phrase. A
 7 disjunctive combination of multiple words or phrases broadens the search, and thus each word or
 8 phrase shall count as a separate search term unless they are variants of the same word. Use of
 9 narrowing search criteria (*e.g.*, "and," "but not," "w/x") is encouraged to limit the production and
 10 shall be considered when determining whether to shift costs for disproportionate discovery.

11 **D. COLLECTION METHODS.** The producing party need not employ forensic data
 12 collection or tracking methods and technologies, but instead may make electronic copies for
 13 collection and processing purposes using widely-accepted methods or methods described in
 14 manufacturers' and/or programmers' instructions, help menus, websites, and the like (*e.g.*, .pst's,
 15 .zip's, etc.), except when and to the extent there is good cause to believe specific, material concerns
 16 about authenticity exist with respect to specific documents and materials. If the receiving party
 17 believes that there is such good cause, then the producing party and the receiving party shall meet
 18 and confer in good faith to determine the extent to which forensic and other data associated with the
 19 specific documents and materials should be produced.

20 **VII. MISCELLANEOUS PROVISIONS**

21 **A. Objections Preserved.** Nothing in this Document Production Order shall be
 22 interpreted to require disclosure information protected by the attorney-client privilege, work-product
 23 doctrine, or any other applicable privilege or immunity. The Parties do not waive any objections as
 24 to the production, discoverability, admissibility, or confidentiality of documents and ESI.

25 **B.** Except as expressly stated, nothing in this order affects the Parties' discovery
 26 obligations under the Federal or local rules.

1 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

2 Dated: May 1, 2013

WEIL, GOTSHAL & MANGES LLP

3
4 By: /s/ Edward R. Reines

5 Edward R. Reines
6 Attorneys for Plaintiffs
7 Verinata Health, Inc., and The Board
of Trustees of the Leland Stanford
Junior University

8 Dated: May 1, 2013

IRELL & MANELLA LLP

9
10 By: /s/ David I. Gindler

11 David I. Gindler
12 Attorneys for Defendants Ariosa
13 Diagnostics, Inc., and Laboratory
Corporation of America Holdings

14 **IT IS SO ORDERED.**

15 Dated: 5/7/13

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17 United States District Judge
18 Susan Illston
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Exhibit A

Field	Applicable Record Types	Notes
BEGBATES	All	
ENDBATES	All	
BEGATTACH	All	Describes range of related documents from email/attachment family or reflects logical document boundaries from scanned docs.
ENDATTACH	All	
CUSTODIAN	All	To the extent feasible, multiple values to account for deduplication.
SENT DATE	Email	
SENT TIME	Email	
TITLE	E-Docs	
SUBJECT	Email	
AUTHOR	Email and, to the extent available, E-Docs	
RECIPIENT	Email	
CC	Email	
BCC	Email	
FULLTEXT	All	Printed or extracted text for e-mail and e-docs, OCR for scanned docs.